

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

HECTOR JESUS ESPINEL-CARDOZO,
Defendant.

----- X
DENISE COTE, District Judge:

Defendant Hector Jesus Espinel-Cardozo, a citizen of Colombia, pleaded guilty in this Court to one count of conspiracy to import five kilograms and more of cocaine, in violation of 21 U.S.C. §§ 812, 959, 960(a)(1) & (b)(1)(B), and 963, and one count of distributing five kilograms of cocaine or more intending that such cocaine would be imported into the United States, in violation of 21 U.S.C. § 959. On July 11, 2008, he was sentenced principally to thirty-six months' imprisonment; he is currently serving his sentence. Espinel-Cardozo now moves this Court for "immediate deportation," contending that the Immigration and Nationality Act ("INA") provides for the deportation of nonviolent alien offenders prior to the completion of their term of imprisonment. His motion is denied.

The INA confers on the Attorney General the discretion to "remove an alien" in federal custody if

if the Attorney General determines that (I)
the alien is confined pursuant to a final
conviction for a nonviolent offense . . . and

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05 Cr. 1262 (DLC)

MEMORANDUM OPINION
AND ORDER

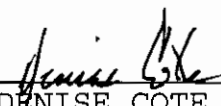
(II) the removal of the alien is appropriate
and in the best interest of the United
States. . . .

8 U.S.C. § 1231(a)(4)(B)(i). The same provision of the INA
provides that "[n]o cause or claim may be asserted under this
paragraph against any official of the United States or of any
State to compel the release, removal, or consideration for
release or removal of any alien." Espinel-Cardozo thus lacks
standing to assert a claim for immediate deportation. Duamutef
v. I.N.S., 386 F.3d 172, 182 (2d Cir. 2004). Accordingly, it is
hereby

ORDERED that Espinel-Cardozo's motion dated May 14, 2008 is
denied.

SO ORDERED:

Dated: New York, New York
August 11, 2008



DENISE COTE
United States District Judge

Copies sent to:

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